

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DIONDRAE PARKER,

Case No. 3:23-cv-00137-MMD-CSD

14

Plaintiff,

ORDER

NED SCHUERING, *et al.*,

Defendants.

11 Pro se Plaintiff Diondrae Parker, who is currently in the custody of the Nevada
12 Department of Corrections (“NDOC”), brings Eighth Amendment claims under 42 U.S.C.
13 § 1983. (ECF Nos. 1-1, 3.) Before the Court is the Report and Recommendation (“R&R”)
14 of United States Magistrate Judge Craig S. Denney, recommending that the Court: (1)
15 grant Plaintiff’s motion for appointment of counsel and refer this case to the Pro Bono
16 Program; (2) deny Defendants’ motion for summary judgment without prejudice to allow
17 Defendants to seek leave to re-file after counsel is appointed; (3) grant Defendants’
18 motion to seal; and (4) deny Plaintiff’s motion requesting acceptance of service as to
19 Defendant Schuering in light of the recommendation for appointment of counsel. (ECF
20 No. 56.) Having reviewed the filings, the Court will adopt the R&R in full.

21 This Court “may accept, reject, or modify, in whole or in part, the findings or
22 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party
23 timely objects to a magistrate judge’s report and recommendation, the Court is required
24 to “make a de novo determination of those portions of the [report and recommendation]
25 to which objection is made.” *Id.* Here, Plaintiff filed an objection where he challenges only
26 the recommendation to grant the motion to seal. (ECF No. 57.) Defendants have not
27 objected but the deadline for objection has not expired. However, the Court finds it
28 appropriate to review the R&R de novo without waiting for Defendants to file an objection

1 to avoid further delay.

2 Magistrate Judge Denney recommended granting Defendants' motion to file
3 certain exhibits that contain Plaintiff's medical files and information relating to Plaintiff's
4 mental health episode. (ECF No. 56 at 3.) Plaintiff objects, raising concerns about the
5 need for the exhibits to be considered and presented to support his claims. (ECF No. 57.)
6 Plaintiff appears to misunderstand the purpose of sealing—sealing prevents public
7 access but the exhibits are still part of the case and may be offered for admission at trial.
8 The Court overrules Plaintiff's objection and agrees with Magistrate Judge Denney that
9 compelling reasons exist to support granting Defendants' motion to seal.

10 Magistrate Judge Denney recommended granting Plaintiff's motion for
11 appointment of counsel primarily because Plaintiff has demonstrated acute mental health
12 issues and a lack of access to his legal work. (ECF No. 56 at 3.) The Court agrees that
13 these reasons, coupled with the nature of the allegations supporting the excessive force
14 claims as alleged in the Complaint, support a finding that exceptional circumstances exist
15 to warrant appointment of counsel. And because the Court will refer this case to the Pro
16 Bono Program, the Court agrees with the recommendations to deny the two remaining
17 motions without prejudice.

18 It is therefore ordered that Judge Denney's R&R (ECF No. 56) is accepted and
19 adopted in full.

20 It is further ordered that Plaintiff's objection (ECF No. 57) is overruled.

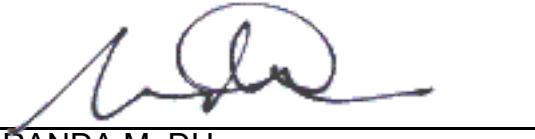
21 It is further ordered that Plaintiff's motion for appointment of counsel (ECF No. 53)
22 is granted. The Court refers this case to the Pro Bono Program adopted in Amended
23 General Order 2019-07 for the purpose of screening for financial eligibility (if necessary)
24 and identifying counsel willing to be appointed as pro bono counsel for Plaintiff. See
25 Amended General Order 2019-07, Section 1(a)(1) ("At any time during the course of
26 litigation, an assigned Judge may refer the case to the Program for the appointment of
27 pro bono counsel."). The scope of appointment is for all purposes. By referring this case
28 to the Program, the Court is not expressing an opinion as to the merits of the case.

1 It is further ordered that Plaintiff's motion requesting that service be accepted for
2 Defendant Ned Schuering (ECF No. 54) is denied without prejudice to Plaintiff's counsel
3 seeking any appropriate relief.

4 It is further ordered that Defendants' motion for summary judgment (ECF No. 36)
5 is denied without prejudice and with leave to refile after Plaintiff has secured counsel.

6 It is further ordered that Defendants' motion for leave to file certain exhibits under
7 to seal (ECF No. 37) is granted.

8 DATED THIS 11th Day of September 2024.

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12 MIRANDA M. DU
13 CHIEF UNITED STATES DISTRICT JUDGE

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